

**OPINION
62-32**

March 26, 1962 (OPINION)

CITIES AND VILLAGES

RE: Elections - Appointment of Judges and Inspectors

Re: Election

This is in response to your letter in which you state that the City of Carrington has a council form of government. The question then arises how are the judges for the municipal election appointed or designated for the election to be held on April 2, 1962. You also submit the following set of facts and ask how is the inspector for this ward to be appointed or designated:

One of the aldermen has resided in another ward for approximately six months but yet he has continued to serve as councilman from that ward. Therefore, his unexpired term of office will come up for election also. Further, the other alderman from that particular ward is running for Mayor. It would appear that one must refer to section 16-10-04 of the Code which provides for the appointment of inspectors. Do you feel that the alderman who has physically moved to another ward would be qualified to serve as inspector? Further, do you feel that the other alderman from said ward could legally act as inspector since he is a candidate for Mayor? Further, do you feel either of the above councilmen would be legally entitled to appoint an inspector or would it be permissible for the City Council to appoint the same?"

As to the first question, section 40-21-13 is to be given some weight. This section applies unless otherwise provided for. Section 16-10-04 provides that the senior alderman shall be inspector of elections for the precinct in which he lives. The inspector appoints the judges under section 16-10-07. You will note that under subsection 2 of said section, the judges are to be members of different political parties and of the two parties which cast the highest number of votes at the preceding general election. This provision is extremely difficult to comply with because registration as such is no longer required. The individual voter merely calls for a certain party ballot at the primary election and no record is kept as to the party ballot called for. Along the same lines, section 16-10-08 would have no application here, inasmuch as said section pertains to primary or general elections. It would thus appear that the inspector appoints the judges, and to the best of his ability, should designate the judges from different political parties. Inasmuch as the statute does not prescribe the guides to be followed by the inspector, much would be left to his discretion, for the final analysis it becomes extremely difficult to identify any person belonging to either one party or another unless he was active in such a manner that he

can be clearly identified. We do not believe that the selection of judges must be limited to such individuals who have been active in party politics. It would, therefore, appear that the selection rests in the sound discretion of the inspector.

As to the second question, the alderman who removed himself from the ward whose unexpired term will be up for election, cannot qualify as inspector for that ward. The other alderman who is now running for mayor would be disqualified under section 16-10-01. It would thus appear that neither of the aldermen in question can qualify as an inspector. It would also appear to be within the contemplation of section 16-10-04 that the aldermen acting as a group (the city council) would have the authority to designate the inspector for a ward where the aldermen of such ward are disqualified.

Being that title 40 does not provide for the specific answer but merely makes reference to the general election laws in section 40-21-13, and being that chapter 16-10 does not supply the statutory answer to the questions, we must attempt to construe the various provisions referred to in such a manner so as to support a principle of local government.

It is, therefore, our opinion that the senior alderman, the inspector of a ward, designates the judges for said ward and in designating such judges, he should appoint them from different political parties, if they can be readily identified as such. The inspector is not required to ask or receive nominations from the county central committee. It is our further opinion that where the aldermen of a ward are ineligible and disqualified from acting as inspectors of said ward, that the remaining aldermen as a group (city council) appoint and designate the inspector for said ward.

LESLIE R. BURGUM
Attorney General